

**Before the
THE FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2016 Biennial Review of Telecommunications Regulations)	WT Docket No. 16-138, WC Docket No. 16-132, IB Docket No. 16-131
)	

To: Wireless Telecommunications Bureau
 Wireline Competition Bureau
 International Bureau

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)^{1/} hereby submits these reply comments in the above referenced proceedings in which the Commission seeks input, consistent with its obligation under Section 11 of the Communications Act of 1934, as amended, to review biennially its regulations.^{2/} T-Mobile supports the Commission’s efforts to remove unnecessary regulations that may impede providers of telecommunications services from effectively competing. Commenters have identified several regulatory regimes that should be pared back or eliminated because they are unnecessary, outdated, needlessly complex, or overlap with regulatory protections provided by other agencies. In other instances, however, where there is evidence of market failure, retaining regulatory backstops is appropriate. The Commission must be careful to preserve regulation necessary to protect competition in the face of market failure as it embarks on its laudatory efforts to remove regulatory underbrush.

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} 47 U.S.C. § 161. *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, Public Notice, FCC 16-149 (Nov. 3, 2016) (“*Biennial Review Public Notice*”).

Rules that Implement Unnecessary Regulatory Regimes Should be Re-examined

The *Broadband Privacy Order* is unnecessary, burdensome, and conflicts with consumers' expectations.^{3/} As CTIA pointed out, the rules adopted in that Order are “out of step with longstanding privacy practices.”^{4/} T-Mobile agrees. The retail broadband market is subject to intense competition, and no evidence of market failure has been identified that justifies the recently-adopted rules. Privacy and security of consumer data are extremely important, but the best way to protect consumers is through a consistent privacy regime across the Internet that focuses on the sensitivity of consumer data – rather than the entity that holds it. And, as noted below, the rules adopted in the *Broadband Privacy Order* overlap with and differ from policies enforced by the Federal Trade Commission (“FTC”).

The broadband privacy rules are an example of an area where the Commission can re-evaluate whether, and to what extent, regulatory intervention is required. While there is an ongoing proceeding that can be effectively employed to re-examine these rules,^{5/} the biennial rule review process may also be an appropriate vehicle for eliminating these unnecessary regulations.^{6/} The Commission should employ whichever procedural process is most efficient and effective to re-evaluate this regulatory regime.

Outdated and Unnecessary Regulations Should be Eliminated

As commenting parties pointed out, there are many regulations that are simply outdated or irrelevant based on changes in industry structure, technology or consumer behavior. Others

^{3/} *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, FCC 16-148 (rel. Nov. 2, 2016) (“*Broadband Privacy Order*”).

^{4/} CTIA Comments at 9. *See also* CenturyLink Comments at 22.

^{5/} *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106. *See, supra*, note 3.

^{6/} *Biennial Review Public Notice* at 1.

are overly complex and administratively burdensome. For example, Section 43.62 of the rules establishes outdated reporting requirements for holders of international section 214 authorizations; Sections 22.301 and 22.305 require cellular and Part 22 licensees to have paper licenses available in an age of electronic licensing; and Sections 22.935, 22.936, 22.393, 22.940, and 24.16 still provide for a comparative renewal process for cellular, PCS and Part 22 licenses. This regulatory underbrush, which may have once served to protect competition or consumers, now only imposes unnecessary compliance costs on providers of telecommunications services – costs that affect providers’ ability to effectively compete. The Commission should carefully review all the regulations cited by commenters and eliminate those that are outdated or irrelevant.

Cross-Agency Redundancies Should Be Eliminated

The Commission has adopted regulations in areas where other agencies have also asserted jurisdiction. For example, as noted above, the *Broadband Privacy Order* overlaps with, and differs from, policies adopted and enforced by the FTC.^{7/} This type of regulatory incompatibility does nothing to protect consumers and instead undermines the efficient functioning of the telecommunications market. Similarly, as Verizon pointed out, other agencies have jurisdiction over discriminatory employment practices, not the FCC.^{8/} Yet, the Commission retains a requirement that providers report on their hiring and employment practices.^{9/} Requiring

^{7/} See, e.g. *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations For Businesses and Policymakers*, FTC Report, available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> (March 2012); and *Enforcing Privacy Promises*, FTC, May 31, 2016, available at <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/enforcing-privacy-promises>.

^{8/} Comments of Verizon, IB Docket No. 16-131 ET Docket No. 16-127 PS Docket No. 16-128 WT Docket No. 16-138 WC Docket No. 16-132 at 8 (Dec. 5, 2016).

^{9/} See, e.g., 47 C.F.R. §§ 1.815, 25.601.

different regulatory agencies to enforce regimes intended to address the same goals is unnecessary and potentially competitively harmful. The Commission should therefore eliminate regulations that address issues that are appropriately covered by another agency.

Regulatory Backstops are Necessary to Protect Against Market Failure

While T-Mobile agrees that the Commission’s use of the biennial review process should be meaningful and remove or pare back regulatory regimes that are outdated or unnecessary, it must be mindful that some regulations play an important role in protecting competition. Indeed, Section 11 of the Communications Act directs the Commission to “determine whether any...regulation is no longer necessary in the public *interest as the result of meaningful economic competition between providers of such service.*”^{10/} In other words, where there is a shortage of meaningful economic competition, regulations should be preserved. Commissioner Pai has recognized this, observing that “proof of market failure should guide the next Commission’s consideration of new regulations.”^{11/} In the context of the biennial review, that means preserving those regulations that were imposed in the face of market failure, such as, for example, the Commission’s interconnection rules,^{12/} until such time as there is evidence that the market has corrected itself.

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This proceeding represents a good opportunity for the Commission to reduce the regulatory burdens on providers – burdens that impede carriers’ ability to compete. Some regulatory regimes, like those adopted in the broadband privacy proceedings, are simply

^{10/} 47 U.S.C. § 161 (emphasis added).

^{11/} Remarks of FCC Commissioner Ajit Pai Before the Free State Foundation Tenth Anniversary Gala Luncheon, December 7, 2016, available at <https://www.fcc.gov/document/commissioner-pai-remarks-free-state-foundation-luncheon>.

^{12/} See, 47 C.F.R. §§ 51.100-51.919.

unnecessary to protect consumers. Others are outdated, unnecessarily complex, or overlap with regulatory protections afforded by other agencies. All should be re-examined, while retaining those regulatory protections that remain necessary due to a market failure.

Respectfully submitted,

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